

2003 JUL 17 AM 10: 5

NANCY M.
MAYER-WHITTINGTON
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

GALE A. NORTON, Secretary of the Interior, et al.,

Defendants.

Case No. 1:96CV01285
(Judge Lamberth)

RESPONSE TO COURT'S INQUIRIES DURING CLOSING ARGUMENTS

Just prior to the conclusion of oral argument on July 8, 2003, the Court inquired about the government's position regarding possible modifications the Court might make, as part of a structural injunction, to the two plans which the Interior Defendants submitted, and also inquired about the possibility of reinstalling a Court Monitor as part of the structural injunction. Tr., July 8, 2003, p.m., at 25-30. Stressing that "I don't make the final decision on those kinds of things" and that "this is just me talking right now," government counsel nonetheless engaged in a colloquy with the Court on these issues.

Although Interior Defendants assume that government counsel made sufficient disclaimers in his response to the Court's inquiries, they nonetheless stress that their position on these questions remains that it is beyond this Court's jurisdiction to enter a structural injunction that dictates how the Interior Defendants must conduct trust reform or comply with their obligation to account to individual Indian money ("IIM") account holders. In remanding the matter back to this Court in 2001, the Court of Appeals stated that "supervision of the Department's conduct in preparing an accounting may well be beyond the district court's jurisdiction," Cobell v. Norton, 240 F.3d 1081, 1106, 1110 (D.C. Cir. 2001), and indicated that

"defendants should be afforded sufficient discretion in determining the precise route they take."

Id. at 1110.

Interior Defendants do not consent to a structural injunction of any sort, to another court monitor, or to any sort of board or other entity to perform a monitoring role.

Dated: July 17, 2003

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

A handwritten signature in black ink, appearing to read "Sandra P. Spooner", is written over a horizontal line.

SANDRA P. SPOONER
D.C. Bar No. 261495
Deputy Director
JOHN T. STEMPLEWTCZ
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on July 17, 2003 I served the foregoing *Response to Court's Inquiries During Closing Arguments* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
607 - 14th Street, NW
Box 6
Washington, D.C. 20005
(202) 318-2372

Per the Court's Order of April 17, 2003,
by facsimile and by U.S. Mail upon:

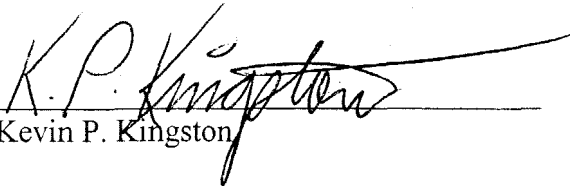
By U.S. Mail upon:

Earl Old Person (*Prose*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
(406) 338-7530

Elliott Levitas, Esq
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By facsimile and U.S. Mail:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
13th Floor
Washington, D.C. 20006
(202) 986-8477


Kevin P. Kingston